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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/761,013	01/20/2004	William J. Vroon	BRP / 204	1651

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WOOD, HERRON & EVANS, LLP
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CINCINNATI, OH 45202

EXAMINER

GROSSO, HARRY A

ART UNIT	PAPER NUMBER
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3781

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	01/30/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No. 10/761,013	Applicant(s) VROON, WILLIAM J.	
	Examiner Harry A. Grosso	Art Unit 3781	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 November 2006.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6, 9, 10, 12-19, 23-25, 27, 36, 37 and 45-55 is/are pending in the application.
- 4a) Of the above claim(s) 5, 13, 14, 18 and 23 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) 1-4, 6, 9, 10, 12, 15-17, 19, 24, 25, 27, 36, 37 and 45-55 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Drawings

The objection to the drawings has been overcome by the amendment filed November 7, 2006. The objection is withdrawn.

Claim Rejections - 35 USC § 112

The rejection of claims 7, 8, 20, 21 under 35 U.S.C. 112, first paragraph, has been overcome by the amendment filed November 7, 2006. The rejection is withdrawn.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 1, 3, 4, 16, 17 and 45 are rejected under 35 U.S.C. 102(b) as being anticipated by Slager et al (Slager), of record.

Regarding claims 1 and 16, Slager discloses a stackable horizontal dispensing container with a pallet base (12), a pallet cover (16, Figure 3, column 7, line 63 to column 8, line 12) and a three sided sleeve that is removably secured to the base and the cover. The segment of sidewalls 14a and 14b and indicate at the lead line for 59 that extend into the opening constitute rectangular frames secured to opposing sides of the sleeve.

1. Regarding claim 3, Slager discloses the sleeve is made of multiple pieces joined together by the cover.

2. Regarding claims 4 and 17, Slager discloses dunnage in the container.

3. Regarding claim 45, Slager discloses a horizontal brace, the lip (22) attached to the pallet cover.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Slager. Slager discloses the claimed invention except for the sleeve being less than twenty millimeters thick. It would have been an obvious matter of design choice to make the sleeve of Slager with a thickness of less than twenty millimeters, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. In re Rose, 105 USPQ 237 (CCPA 1955).

6. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Slager in view of Budowski et al (6,827,231). Slager discloses the invention except for the sleeve being made of one piece of material. Budowski discloses a horizontal dispensing container with the sleeve made of one piece of material (Figures 1 and 3a-3d, column 6, lines 34-54). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of a sleeve made of one piece of

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material as disclosed by Budowski et al in the container disclosed by Slager to provide a tighter, more stable container and simplify assembly.

7. Claims 6 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Slager in view of Bazany et al (6,540,096) (Bazany).

8. Regarding claims 6 and 19, Slager discloses the invention except for the use of pouches as dunnage. Bazany disclose a horizontal dispensing container with pouches for dunnage since pouches are commonly use for transporting auto parts (40, Figure 1, column 8, lines 14 to 29) It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of pouches for dunnage as disclosed by Bazany in the container disclosed by Slager because it is known in the art to use pouches for transporting items such as auto parts in this type of container.

9. Claims 9, 10, 24 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Slager in view of Francis, Jr. et al (4,828,132) (Francis, Jr.).

Regarding claims 9 and 24, Slager discloses the invention with the sleeve made from plastic but does not teach the sleeve being made of corrugated plastic material. Francis, Jr. discloses a container with a pallet base, a pallet cover and a sleeve and the sleeve is constructed from corrugated plastic because the corrugated material provides increased resistance to bending (Figures 1-3, column 3, lines 5-25). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of corrugated plastic panels as disclosed by Francis, Jr. in the container disclosed by Slager because the use of corrugated material provides increased resistance to bending.

10. Regarding claims 10 and 25, Francis, Jr. discloses the use of panels with the corrugations extending vertically to resist bowing in a direction along the length or width of the container. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of vertical corrugations as disclosed by Francis, Jr. in the container disclosed by Slager to help the sleeve walls resist bowing in a direction along the length or width of the container.

11. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Slager in view of Silberman (1,163,696). Slager discloses the invention except for fasteners extending through the pallet base, pallet cover and sleeve. Silberman discloses a container with a fastener extending through a pallet base the sleeve (sidewalls) and the cover to secure the parts to form the container (Figures 1-5, page 1, lines 42-71) and make it strong and rigid. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of fasteners extending through the pallet base cover and sleeve as disclosed by Silberman in the container disclosed by Slager to provide a container that is strong and rigid.

12. Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Slager as modified by Francis, Jr. in view of Silberman (1,163,696). Slager and Francis, Jr. disclose the invention except for fasteners extending through the pallet base, pallet cover and sleeve. Silberman discloses a container with a fastener extending through a pallet base the sleeve (sidewalls) and the cover to secure the parts to form the container (Figures 1-5, page 1, lines 42-71) and make it strong and rigid. It would have been obvious to one of ordinary skill in the art at the time the invention was made to

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have incorporated the use of fasteners extending through the pallet base cover and sleeve as disclosed by Silberman in the container disclosed by Slager and Francis, Jr. to provide a container that is strong and rigid.

13. Claims 36 and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Slager in view Francis, Jr.

Regarding claim 36, Slager discloses a stackable horizontal dispensing container with a pallet base (12), a pallet cover (16, Figure 3, column 7, line 63 to column 8, line 12) and a three sided sleeve that is removably secured to the base and the cover. The segment of sidewalls 14a and 14b and indicate at the lead line for 59 that extend into the opening constitute rectangular frame members secured to opposing sides of the sleeve.

Slager does not teach the use of a pallet base and a pallet cover having a lip. Francis, Jr. discloses a container with a pallet base, a pallet cover both having lips (12a and 13a, Figure 1, column 3, lines 36-40) and a sleeve. The lips restrain the sleeve against expansion. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of lips on the pallet base and pallet cover as disclosed by Francis, Jr. in the container disclosed by Slager to restrain the sleeve against expansion.

14. Regarding claim 37, Slager discloses dunnage inside the container.

15. Claims 46-49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Slager in view of Francis, Jr. and Silberman.

16. Regarding claim 46, Slager discloses the container with a plastic sleeve as discussed above except for the sleeve with vertical corrugations and the fasteners extending through the corrugations.

17. Francis Jr. discloses the use of panels with the corrugations extending vertically to resist bowing in a direction along the length or width of the container. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of vertical corrugations as disclosed by Francis, Jr. in the container disclosed by Slager to help the sleeve walls resist bowing in a direction along the length or width of the container.

18. Silberman discloses a container with a fastener extending through a pallet base the sleeve (sidewalls) and the cover to secure the parts to form the container (Figures 1-5, page 1, lines 42-71) and make it strong and rigid. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of fasteners extending through the pallet base cover and sleeve as disclosed by Silberman in the container disclosed by Slager and Francis, Jr. to provide a container that is strong and rigid. The container of Slager as modified by Francis, Jr. and Silberman would have the fasteners pass through selected corrugations in the sleeve since Silberman teaches the fasteners passing through a pocket in the sleeve.

19. Regarding claim 47, Slager discloses a horizontal brace, the lip (22) integral with the pallet cover.

20. Regarding claims 48 and 49, Slager discloses dunnage in the container.

21. Claim 50 is rejected under 35 U.S.C. 103(a) as being unpatentable over Slager as modified by Francis, Jr. and Silberman in view of Bazany et al (6,540,096) (Bazany).

22. Slager, Francis, Jr. and Silberman disclose the invention except for the use of pouches as dunnage. Bazany disclose a horizontal dispensing container with pouches for dunnage since pouches are commonly use for transporting auto parts (40, Figure 1, column 8, lines 14 to 29) It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of pouches for dunnage as disclosed by Bazany in the container disclosed by Slager, Francis, Jr. and Silberman because it is known in the art to use pouches for transporting items such as auto parts in this type of container.

23. Claims 51-53 and 55 are rejected under 35 U.S.C. 103(a) as being unpatentable over Slager in view of Francis, Jr. and Silberman.

24. Regarding claims 51 and 55, Slager discloses the container with a cover, the downward extending lip of the cover constituting the brace between opposing walls, and the a plastic sleeve as discussed above but does not teach the sleeve with vertical corrugations and the fasteners extending through the corrugations.

25. Francis Jr. discloses the use of panels with the corrugations extending vertically to resist bowing in a direction along the length or width of the container. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of vertical corrugations as disclosed by Francis, Jr. in the container disclosed by Slager to help the sleeve walls resist bowing in a direction along the length or width of the container.

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26. Silberman discloses a container with a fastener extending through a pallet base the sleeve (sidewalls) and the cover to secure the parts to form the container (Figures 1-5, page 1, lines 42-71) and make it strong and rigid. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of fasteners extending through the pallet base cover and sleeve as disclosed by Silberman in the container disclosed by Slager and Francis, Jr. to provide a container that is strong and rigid. The container of Slager as modified by Francis, Jr. and Silberman would have the fasteners pass through selected corrugations in the sleeve since Silberman teaches the fasteners passing through a pocket in the sleeve.

27. The brace extending between opposed sides is fastened to the pallet base and the sleeve by the fasteners since the brace is integral with the cover.

28. Regarding claims 52 and 53, Slager discloses dunnage in the container.

29. Claim 54 is rejected under 35 U.S.C. 103(a) as being unpatentable over Slager as modified by Francis, Jr. and Silberman in view of Bazany et al (6,540,096) (Bazany).

30. Slager, Francis, Jr. and Silberman disclose the invention except for the use of pouches as dunnage. Bazany disclose a horizontal dispensing container with pouches for dunnage since pouches are commonly use for transporting auto parts (40, Figure 1, column 8, lines 14 to 29) It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of pouches for dunnage as disclosed by Bazany in the container disclosed by Slager, Francis, Jr. and Silberman because it is known in the art to use pouches for transporting items such as auto parts in this type of container.

Response to Arguments

31. Applicant's arguments with respect to Yu have been considered but are moot in view of the new ground(s) of rejection.

32. In response to applicant's argument that Budowski et al is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Budowski et al is horizontal dispensing container just as the container of the instant application.

33. Applicant argues that the use of a one piece sleeve as taught by Budowski would destroy the purpose of Slager et al. In response, the purpose of Slager et al is to provide a horizontal dispensing container that can be accessed through a top opening. The embodiment with the three sidewalls would not be prevented from this function if the three sidewalls were formed as one piece. The sidewall unit would still be capable being attached to the pallet base using the attachment method in Slager et al.

34. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re*

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Jones, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, The Bazany et al reference is a horizontal dispensing container and it would have been obvious to one of ordinary skill in the art that the pouches of Bazany could be used in Slager. Francis, Jr. is a pallet container and would be analogous art. The use of corrugated sidewalls and a lip to help restrain the bottom of the sleeve would have been knowledge generally available to one of ordinary skill in the art. Silberman disclose a container with a base, a sleeve and a cover and a method for securing the cover the sleeve and the base using a fastener that extend through all three. It is not unreasonable to expect one of ordinary skill in the container art to have knowledge of the fastener disclosed by Silberman and it would be obvious to use the concept to provide a more rigid construction.

Conclusion

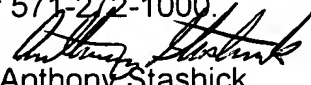
This action is made non-final since it contains new grounds of rejection not necessitated by applicant's amendment.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Harry A. Grosso whose telephone number is 571-272-4539. The examiner can normally be reached on Monday through Thursday from 7am to 4 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on 571-272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Anthony Stashick
Supervisory Patent Examiner
Art Unit 3781

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